SERVED: April 29, 1994

NTSB Order No. EA-4147

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 13th day of April, 1994

DAVID R. HINSON, Administrator, Federal Aviation Administration, Complainant, v. JOHN F. HARDY, Respondent.	Docket SE-12413

OPINION AND ORDER

Respondent has appealed from the oral initial decision of Administrative Law Judge William E. Fowler, Jr., issued on September 3, 1992, following a 2-day evidentiary hearing.[1] The law judge affirmed an order of the Administrator suspending respondent's mechanic certificate for 60 days and his Inspection

[1]The initial decision, an excerpt from the hearing transcript, is attached.

Authorization for 180 days. We deny the appeal.

The Administrator alleged, and the law judge found, that respondent violated numerous Federal Aviation Regulations in connection with his annual inspection of a Mooney M020E, civil aircraft N3243F.[2] The law judge found, among other things, that respondent certified that he had performed an annual inspection and certified the aircraft as airworthy, meeting all Airworthiness Directives (ADs), when various parts and mechanisms were in poor condition and respondent had not ensured compliance with applicable ADs.

On appeal, respondent claims that the preponderance of the evidence does not support a number of the law judge's factual findings, in part because the evidence is flawed, and that the law judge committed prejudicial errors in the conduct of the hearing. We address the procedural claims first, pausing only to note our agreement with the law judge's comment that the evidence against respondent in this case is overwhelming.[3]

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[2]The cited regulations are reproduced in Appendix A to this decision. The Administrator's allegations are reproduced in Appendix B.

[3]The Administrator introduced a great deal of evidence regarding the poor condition of parts (only some of which were named in the complaint), and lack of compliance with maintenance and recordkeeping requirements. Much of this evidence is not discussed in this opinion because it is not implicated in respondent's appeal, but this evidence clearly supports the initial decision and our decision on appeal. Thus, for example, there is no discussion here of the Administrator's evidence that respondent failed to wash the engine as required by the checklists, failed to reinstall seat stops, failed adequately to check the nose wheel for dents that would cause loss of tire pressure (the former examples constituting evidence that would support findings that respondent failed to make the repairs cited

Respondent alleges that he was not given an adequate opportunity to present his case. In support, he argues that the law judge directed on 18 occasions that counsel expedite the proceedings, with 11 of those directions given to respondent. Although we obviously agree with respondent's general concern that an interest in expediting matters may not interfere with a respondent's right to a fair hearing, we have carefully reviewed the entire transcript and find no indication that respondent was not given a full opportunity to defend himself or that the law judge unduly hurried this proceeding. We see no abuse of discretion in the law judge's reactions, as cited by respondent. Further, respondent's appeal fails to offer even one example of information he would have, but allegedly was not able to, present.[4]

Respondent also argues that various misstatements by counsel for the Administrator in closing argument were prejudicial. Again, we do not agree. The language cited by respondent is, at most, hyperbole able to be discounted by the law judge after having heard lengthy testimony on these matters. We see no indication that the law judge relied on these statements, nor can

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in the complaint), and failed to log ADs as necessary to maintain a useful record.

[4]To the extent respondent's argument may be read to suggest bias by the law judge, we note that the majority of significant rulings by the law judge favored respondent. See, e.g., Tr. at 272-277, where the law judge denied both the Administrator's motion to add an additional regulatory violation to the complaint and his motion for summary judgment.

we see any real or prejudicial errors of fact in them.[5]

Turning to more substantive claims, respondent argues generally that the evidence is not trustworthy because no FAA examiner actually saw the allegedly defective work or defective parts when they were still installed on the aircraft. Respondent argues that precedent requires evidence more reliable than merely the testimony of another mechanic, the primary witness here. Instead, respondent contends, Board precedent requires that the FAA either witness the teardown or requires that the FAA inspector observe the defective equipment installed on the aircraft and note the discrepancies. The Administrator contests this formulation of precedent, and we agree it is inaccurate.

The cases respondent cites to support his theory of the law stand, rather, for the proposition that the Administrator must present reliable evidence. Probative, reliable evidence may be in the form of testimony from an FAA inspector who observed the aircraft's discrepancies. See, e.g., Administrator v. Hesse, 4 NTSB 1180 (1983), and Administrator v. Dickman, 5 NTSB 77

[5]For example, although respondent challenges the Administrator's characterization that "the Mooney checklist . . . says you have to check that fuel selector valve every fifty hours and at the annual inspection" (see Appeal at 19), the Mooney M20 Series Service & Maintenance Manual, Exhibit A-19, does say that the fuel selector valve and gascolator strainers should be removed and cleaned every 50 hours. Exhibit A-25, also entitled Mooney M20 Series Service & Maintenance Manual, directs that the fuel selector valve or gascolator strainer be removed and inspected for an annual inspection. Exhibit A-26, the checklist respondent actually used, says to check the condition and operation of fuel tank selector valves.

(1985).[6] But this is not the exclusive manner of proof. See, e.g., Administrator v. Adams, NTSB Order EA-3662 (1992) (testimony by subsequent mechanic established lack of required placard) and Administrator v. Hammerstrand, NTSB Order EA-3739 (1993).[7]

Respondent and his wife own and operate a general aviation airfield, Littlebrook Airpark. The involved aircraft had been located at this field for many years, and in recent years respondent had maintained it. Mr. Donald LaCroix, who had had prior business dealings with respondent and had taken flight lessons from respondent's wife, expressed interest in the aircraft. In early September 1990, Mr. LaCroix bought the aircraft, after a pre-purchase inspection by respondent.[8] Shortly thereafter, respondent asked Mr. LaCroix if he could perform the annual inspection and other work to be done on the aircraft. Mr. LaCroix, apparently somewhat embarrassed that he had not used respondent's mechanical services much in the past

[6]Proper citation form when a cite to a printed volume is not available is the order number ("NTSB Order EA-XXXX").

[7]Respondent also argues that, were this a criminal trial, the evidence would not be admissible, suggesting that there was a warrantless search. We see no basis for this supposition. The owner of the aircraft invited the FAA to review the condition of the aircraft and this examination was not conducted on respondent's property. If respondent is suggesting that there was no need to remove the faulty parts, we decline to so hold.

[8]Respondent testified that he did not do a thorough examination of the aircraft other than a compression test of the engine. Tr. at 10.

for his other aircraft, agreed.[9]

The annual inspection took considerably longer than Mr. LaCroix expected but, following its completion (in late October or early November 1990), he flew the aircraft and felt the work was satisfactory. Tr. at 28. Problems arose, however, when Mr. LaCroix attempted to recover the aircraft and engine logs. Mr. LaCroix also considered the bill to be extremely high. The parties were disputing the bill at the same time as Mr. LaCroix was attempting to retrieve the logbooks, and there were bad feelings.[10] Threats were made by both parties. See Exhibit R-11 letter, dated November 9, 1990.

According to Mr. LaCroix, when he saw his logbooks in respondent's office, he took them. Respondent, however, told him that they were incomplete. Mr. LaCroix returned the logs, and retrieved them a few days later but, Mr. LaCroix testified, respondent said they still were not done and that he would not sign off on certain parts (the air induction filter and the propeller governor oil line).[11] Yet, Mr. LaCroix had seen respondent's October 27, 1990 certification in the logbook that an annual inspection had been performed, and that the aircraft

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[9]Respondent's employee, Rich Hoffman, actually did a great deal of the work, under respondent's supervision. Mr. LaCroix also did some work, with assistance from Mr. Hoffman.

[10]Exhibit A-2, respondent's bill, has a note added by Mr. LaCroix that respondent charged him for a new battery but did not install one. Later work on the aircraft (see Exhibit A-14) supports that charge.

[11]Respondent denied telling Mr. LaCroix that he would not sign off on anything.

was airworthy and in compliance with all applicable ADs.

Mr. LaCroix testified that, at this point, he had lost faith in respondent. He took the aircraft to Dave Carter, a mechanic he had often used before, and asked him to review AD compliance. The aircraft had only a short amount of flight time since respondent's sign-off.[12]

Carter replaced the air induction filter, the propeller governor oil line, and various lines and hoses, citing requirements of three ADs. See Exhibit A-13 work order dated November 30, 1990.[13] Extensive repair work on the aircraft continued, per Mr. LaCroix's directions (see Exhibit A-14 work order, dated December 26, 1990, citing other ADs, leaking hoses, low compression in two cylinders, and corrosion, among other things), but only Mr. Carter testified to seeing all the replacement parts installed on the aircraft. It is established

[12]The tachometer reading noted in respondent's logbook certification of the annual was 445. The Exhibit A-13 work order shows a tach reading of 455.38. Mr. LaCroix testified to approximately 2 hours of flight time since respondent's inspection. Tr. at 74. Exhibit A-23, an internal FAA memo detailing the FAA's findings, indicates that the aircraft had been operated for 14 hours since the annual inspection, but it is unclear when that calculation was made. The difference is not material, as the record is clear that, with the exception of the lack of fuel placards, none of the complained-of discrepancies could have occurred within either time, but had to have developed over a much longer period.

[13]He testified that the metal oil line was chafing, and that a required clamp was missing. Various fuel and fluid lines were quite old (respondent had installed the fuel lines in 1975, Tr. at 87). The hoses introduced as exhibits show areas where the insulation is visibly worn through from chafing. Corrosion at the fittings was so severe that it caused Mr. Carter to be concerned about leakage of gas or oil. According to Mr. Carter, the air filter was unacceptably torn and dirty.

in the record, and not seriously contested by respondent, that the discrepancies allegedly found on this aircraft would render it unairworthy and unsafe.[14]

On January 6, 1991, and in light of Mr. Carter's replacement of two engine cylinders due to low compression, Mr. LaCroix flight tested the aircraft. The engine failed, he testified, because he was unable to switch fuel tanks. He could not move the fuel selector valve switch. (Pursuant to Mr. LaCroix's earlier instructions, Mr. Carter testified that he had only lubricated this switch, not inspected it thoroughly.) After the incident, Mr. Carter found that it was severely corroded.

Mr. LaCroix called the FAA, and two inspectors examined the aircraft in January 1991. The record indicates that, on January 8, they examined the fuel selector valve in the aircraft, and were unable to move it when sitting in the pilot's seat. Exhibit A-22. Later, other faulty parts Mr. Carter testified that he had removed from the aircraft and given to Mr. LaCroix for safekeeping were examined and photographed. See photo Exhibits A-15-17 (the fuel selector valve parts), A-24 (the lack of fuel placards), and A-21 (21 photos of other discrepancies).

Mr. Carter and Inspector Cloutier testified at great length explaining the dangerous condition of the aircraft and tying

[14]Respondent also does not argue that the cited regulations do not apply or would not be violated if the Administrator's allegations were proven. Respondent admits (Tr. Vol. II at 71) that the maintenance entries are incomplete, failing to provide the necessary explanation and aircraft total time in service information in violation of § 43.11.

various discrepancies to an AD or regulatory requirement. Both detailed the defects in the parts cited in the complaint (and others not so cited) and the extensive rust and corrosion throughout fittings.

Respondent, for the most part, answered that the parts at issue on the complaint were in proper condition when he performed his inspection, and offered a slightly different version of events than that of Mr. LaCroix. Respondent apparently believes that Mr. LaCroix was "out to get him" due to his dissatisfaction with the bill, and that Mr. Carter was a willing participant in the scheme. Using part number information he obtained from the manufacturer, respondent testified that various parts entered in evidence and replacement parts installed by Mr. Carter were not the proper parts for this aircraft. Thus, the part exhibits were not from the Mooney and Mr. Carter was not a trustworthy witness. On appeal, respondent continues this attack on Mr. Carter's evidence, and also suggests that Inspector Cloutier was not a reliable witness. Respondent also challenges certain of the law judge's findings of fact.[15]

[15]Notably, however, respondent does not contest the law judge's findings that he failed to ensure that the aircraft met the requirements of all applicable airworthiness directives (see § 43.13(a)(1)). For example, there is considerable record evidence that respondent failed to satisfy AD 85-24-03, which requires inspection of fuel caps and cells. According to Mr. Carter, such an inspection would have found much corrosion, leading to the replacement of these parts. The maintenance log showed that respondent had earlier changed only one of the o-rings in this mechanism rather than all of them, as he testified at the hearing. Tr. Vol. II at 105-106. See also footnotes 3 and 13.

Although Inspector Cloutier was confused regarding the dates of his visits and whether replacement parts had already been installed when he examined the faulty ones, respondent's appeal does not convince us that the law judge erred in accepting the inspector's testimony and ultimately concluding that the exhibits were from the subject aircraft. Not only does Mr. Cloutier's testimony, photos, and Exhibit A-23 (his memo to his supervisor detailing his findings) coincide with Mr. Carter's testimony of what he found, the law judge's holding is based, in great part, on credibility assessments we have been given insufficient basis to overturn.

Turning to respondent's attacks on Mr. Carter, although we agree that he may have had an economic incentive to find errors in respondent's work, Mr. LaCroix's dissatisfaction with respondent was so great that it is unlikely that Mr. Carter had any influence on Mr. LaCroix's opinion of respondent or LaCroix's willingness to use respondent's services again.

The record does, however, indicate some potential problems with Mr. Carter's work -- an issue respondent attempts to exploit, but to no great benefit in our view. Even if this mechanic used some incorrect or inexact parts (and that is not at all clear), that does not, in our view, either excuse respondent's misfeasance or impeach Mr. Carter's credibility regarding the condition of the aircraft as he found it.[16] Mr.

[16]We do not excuse his behavior, but we also do not find that Carter's apparent practice of post dating to the first of the next month inspections that are done at the end of the prior

Carter testified with considerable expert detail and explanation, rebutting respondent's technical challenges, and respondent does not demonstrate that the law judge's reliance on him and, in turn, Inspector Cloutier, was unwarranted.

In addition to these general claims, respondent raises these and other arguments in the context of specific findings. Respondent claims that the evidence does not support the law judge's findings: 1) that the propeller governor oil line, the fuel lines, and the push rod housing (shroud) were damaged and not in their proper condition when the aircraft was returned to service; 2) that fuel filler cover decals or placards had not been installed; and 3) that respondent failed to take appropriate action with regard to the fuel selector valve and bolt. We address each in turn.

The propeller governor oil line. Respondent argues that the only evidence supporting the law judge's findings with regard to this part is that of Mr. Carter and that his evidence was contested by respondent and Mr. Hoffman. In addition to the arguments we have already rejected, respondent argues that the propeller governor oil line entered in evidence was not the right shape (thus supporting his view that it did not come from this aircraft), but Mr. Carter explained that, in removing it, he had bent it. We also are not convinced by respondent's argument that, because the generator must be removed to install this oil line and Mr. Carter's entries do not indicate he removed the

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month warrants rejection of his testimony.

generator, we should discount his testimony. This degree of detail is not required in the log. Mr. Carter testified that, when he did his repair to this line, there was no clamp. Respondent testified it was there.[17] Respondent admitted, however, that the clamp would not have come off between the time of his certification and Mr. Carter's work. Tr. Vol. II at 103. Respondent has failed to show that the law judge erred in believing Mr. Carter on this matter, and respondent does not argue that the propeller governor oil line that was introduced into the record should not have been replaced due to the abrasions on it.

The fuel lines. Similarly, respondent here claims that the fuel lines ostensibly taken from the aircraft were not the correct part numbers and not the same length as the manufacturer's parts, thus suggesting that they did not come from the Mooney. Again, however, Mr. Carter provided an explanation that respondent did not rebut -- that generic tubing was often used, and simply cut to fit, measured against the tubing being replaced. (Indeed, and as noted, respondent had installed these fabricated hoses.) Further, Mr. Carter testified, unrebutted, that the hoses could shrink after being removed from the aircraft. Tr. at 161.

Fuel filler cover decals or placards. Respondent urges us

[17]Respondent suggests that Mr. Hoffman's testimony is supportive. It is of little assistance for a non-licensed mechanic to testify that he saw no problem (Tr. at 140) when it is not established on the record that he knew what to look for.

to overturn the law judge's finding that respondent failed to install these required placards. Respondent's only testimony, however, was that he routinely installed these placards. He could not remember if he had done so in this instance, and Mr. Carter testified that there were none on the aircraft when he worked on it. Moreover, the placard item on the checklist respondent used for the annual inspection on this aircraft (Exhibit A-26) supports a finding that placarding had not been accomplished, as this item was not checked. We can find no grounds to reverse the law judge's decision even though decals Mr. Carter testified he installed had apparently come off by the time Inspector Cloutier took his pictures.

The push rod shroud. The shroud tube, Exhibit A-11, is made of plastic and at one end it was broken and glued together. Respondent would have us reverse the law judge because, in 1973, the manufacturer directed that the shroud tube be replaced with an aluminum one when the relevant cylinder was removed and reassembled, a condition met here. Thus, according to respondent, we should find that the plastic shroud entered in evidence is not from the Mooney. Again, such an argument is not compelling. It is just as logical to conclude on this record that the tube had never been replaced, that at some point an improper repair had been attempted (not necessarily by respondent), and that respondent, as he testified (Tr. Vol. II at 40), simply did not see the repair. For reasons already discussed, we reject respondent's arguments that Mr. Carter's

testimony (that the shroud came off this aircraft) should be ignored because he is biased and because he allegedly installed a part that does not correspond to the one that had been on the aircraft.[18]

The fuel selector valve. We agree with respondent that the preponderance of the evidence does not establish that he was required by the wording of the manuals to remove and take apart the entire valve mechanism as part of the annual inspection. Even by his own checklist, however, he was required to check the condition and operation of the valve, and the two Mooney manuals in evidence direct that the valve or gascolator strainer be removed and inspected. The evidence indicates that the fuel selector valve switch was not easy to move. Respondent did not attempt to move it himself; Mr. Hoffman did so for him. Tr. Vol. II at 58. Mr. Hoffman testified, however, that he could not recall if he tried the switch when he was in the pilot's seat (a more difficult position from which to move it). Id. at 136. In any case, more important is respondent's testimony that he inspected the filter screen and the gascolator. According to Mr. Carter, had respondent done so, he would have noticed the extreme corrosion in the mechanism, and would have proceeded to remove it entirely and clean it, as Mr. Carter did. It is unrebutted in the record that the extent of corrosion dangerously impaired

[18]Respondent also argues that the push rod shroud entered into evidence does not correspond to the part actually installed on the aircraft according to the maintenance records. We do not see where in the record this claim is made or proven.

operation of the mechanism and could not have occurred in the short time between respondent's inspection and Mr. Carter's repair.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied; and

2. The 60-day suspension of respondent's mechanic certificate and the 180-day suspension of his Inspection Authorization shall begin 30 days from the date of service of this order.[19]

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HAMMERSCHMIDT, and HALL, Members of the Board, concurred in the above opinion and order.

[19]For the purposes of this order, respondent must physically surrender his certificate to an appropriate representative of the FAA pursuant to FAR § 61.19(f).